

Docket Number EC-2000-007

**Wisconsin Department of Natural Resources** comments on the proposed Electronic Reporting/Electronic Records Rule.

**Supplemental Comments Submitted February 27, 2002**

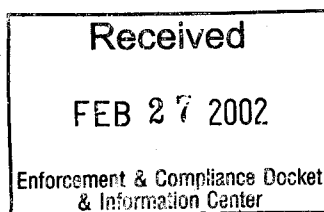
EPA proposed the Electronic Reporting/Electronic Records Rule (CROMERRR - Docket No. EC-2000-007) in the Federal Register on August 31, 2001 and the Wisconsin Department of Natural Resources submitted comments on the proposed regulations on December 6, 2001. The deadline for comments was subsequently extended until February 27, 2002. The Wisconsin Department of Natural Resources (WDNR) is hereby submitting the following additional comments.

The Wisconsin Department of Natural Resources wants to encourage electronic reporting of data and electronic record keeping for data that is submitted. The proposed regulations, however, would impose rigid legal and technical requirements that would likely discourage rather than encourage electronic reporting. This concern is most pronounced for the record keeping portions of the proposed regulations.

Although the proposed record keeping requirements may be well intended, WDNR does not believe that EPA should be imposing record keeping requirements for electronic data submittals that go beyond the counterpart requirements for information submitted in paper form. For example, for environmental monitoring results, there may presently be no requirement for a facility to maintain a copy of the electronic output from an laboratory instrument when results are reported to WDNR on a monthly monitoring summary form. In that case, there should be no new requirement imposed by CROMERRR to retain the electronic laboratory instrument outputs just because the monthly reporting form is submitted electronically.

The electronic reporting portions of the proposed regulation should proceed after incorporating appropriate amendments based upon public comments. The portion of the proposed regulation that proceeds should be applicable only to data that is submitted to EPA or an authorized state regulatory agency in fulfillment of a regulatory requirement. The applicability portion of the regulation as well as the definitions of "electronic document" and "electronic record" should be unambiguous and limited in that regard. New record keeping requirements that would apply to electronic records that are not submitted to government agencies should be held in abeyance. Those portions of the proposed regulation should be reexamined in the context of all records, not just electronic records. They should also be reexamined for consistency with the policies and regulations of other federal agencies.

The Wisconsin Department of Natural Resources has worked closely with the Environmental Council of the States (ECOS) on the ECOS draft CROMERRR rule comments. WDNR supports the ECOS comments which will be submitted under separate cover.



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**Submitted December 6, 2001**

Wisconsin appreciates both the work that this proposed rule required, and the establishment of "performance criteria" as the basis for the rule. Generally we agree with the proposed rule and are working to build electronic solutions as our needs and resources provide. We do have areas of concern and comments that we think would improve the rule.

- \* EPA must clarify the approval process required for states to implement an electronic reporting program. Our program plans are an agreement between Region V and states on how we are to administer an authorized program. The annual plans cover broad areas of the agency's activities and are not as detailed such as those proposed in the rule. EPA should provide further details of the approval process, including any agreements between the specific program offices and the OEI to support the approval process, the timelines for the approval process, and definition for program changes that would trigger the approval process. This becomes especially important where a state-wide registration procedure is being developed, for example, here in Wisconsin by our Department of Electronic Government. Who in EPA would be responsible for a request for approval for such a procedure?

- \* We have two concerns with EPA's Central Data Exchange, (CDX), as portrayed in the proposed rules.

The first is the need to carefully articulate that the CDX is being designed to satisfy the federal reporting requirements, and that facilities operating under authorized state programs, but wishing to use the CDX, must first meet state requirements. This example may clarify this concern: EPA may soon publish an electronic reporting solution for NPDES discharge monitoring reports, within the proposed rule. We recognize and support such an action, but it must be clear that facilities regulated by our WPDES program must comply with our requirements, and may not just submit NPDES- based information to CDX.

The second concern is the stability and applicability of the CDX. It is our understanding that the CDX is being operated under contract by an outside service provider. It is also our understanding that the EPA's national program offices and Regional program offices are not integrally involved with the CDX. Our program plans with Region V establish the foundation for our working relationship, but CDX has yet to be included in this planning and program management process. The proposed rule states the "EPA is exploring opportunities to leverage CDX resources for use by States?" yet our knowledge of the CDX is that its development and implementation is being done outside of the normal regulatory structures. EPA should clarify how the CDX program is organized, supported, and its role with the program offices. This explanation should be included both in the preamble to the rule and should be consistent with the Implementation Plan for the Information Exchange Network currently being drafted cooperatively between the states and EPA.

- \* The proposed rule provides the "performance criteria" for programs requiring electronic signatures. We encourage EPA to develop an alternative set of criteria for programs that do not require electronic signatures. This would expand the scope of the rule to cover all aspects of our interactions with the regulated community.

- \* We understand that states that want to allow reporting in the future via direct electronic means for

authorized/delegated programs can't do so until they show EPA that their program meets the standards in the regulations under the separate specific authorization/delegation regulations for that program. But the proposal says that states that already allow such reporting under their own laws and regulations aren't affected by this proposal - we find that to be confusing (pg 46167, section III. A. states: "Nonetheless, nothing in this proposal will prohibit State, tribal or local authorities from requiring electronic reporting or record-keeping under applicable State, tribal and local law."). What if that reporting is already a part of an authorized/delegated program that was previously approved by EPA? Are those states supposed to discontinue that reporting until they can get their program delegation/authorization modified to include it under these regulations? We suggest that you modify the proposal to allow that reporting to continue if it's already part of an authorized/delegated program and set a reasonable schedule (probably several years) for those states to bring their systems up to EPA standards and get their program modifications approved.

\* The proposed rule contains records management requirements for electronic data that in some cases go beyond records management requirements for information which is submitted in a non-electronic form. Although improved records management is desirable, Wisconsin is concerned about 1) the costs for added records management requirements; 2) consistency between records management requirements for electronic and non-electronic records; and 3) not creating unnecessary barriers that might discourage electronic data submittal.



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> Subject: CROMERRR rule - EPA Docket Number EC-2000-007  
>  
> On behalf of the Wisconsin Department of Natural Resources, I am hereby  
> submitting the attached comments regarding the proposed CROMERRR rule.  
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> <<CROMERR2.doc>>  
> Sincerely,  
>  
> Brenda Hagman  
> Chief Information Officer  
> Wisconsin Department of Natural Resources  
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